



LIVING TOGETHER

DE FACTO RELATIONSHIPS

The term “de facto relationship” is the name given to a relationship where people live together as though they are married or in a civil union but without actually being legally married or in a civil union.

Some people who live in a de facto relationship have deliberately decided to avoid the legalities of a marriage or a civil union but others may develop such a relationship less consciously – sometimes by simply drifting into it.

This guide looks at some areas of the law that affect people who choose to live together without getting married or entering a civil union, although often the law treats de facto couples the same as married or civil union couples.

In particular, the Property (Relationships) Act applies automatically to de facto couples (including those of the same sex). Accordingly, people entering or already in a de facto relationship should consider its effects. It governs how property should be divided and applies not only when a relationship ends through separation but also if it ends through the death of a partner.

If you do not want this law to apply to you, you may contract out of the Property (Relationships) Act’s provisions by drawing up a legal agreement – you will each need independent legal advice about this so that any agreement is fair to you both. See our other guide, *Dividing up relationship property*, for more information on this complex area of law.

NAMES

It is quite legal to use any name you like. If you decide to live with someone, you can keep

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your own surname or use your partner's surname. If you want to change your name, just ask your friends, your employer, your bank, the Inland Revenue Department, etc, to call you by the new name. If you want to change your name for official purposes, such as on a passport or title to land, you can do so formally by signing a deed poll.

See your lawyer or the Registrar of Births Deaths & Marriages about it. The deed poll does not change the name on your birth certificate but it is accepted as an official change of name.

It is for you and your partner to decide by what surname your children will be called. If you wish to change a child's name officially, the child's other parent or guardian must agree. If the two of you cannot reach agreement, you can ask a Family Court to decide.

CHILDREN

Status: All children in New Zealand are equal before the law. There are no "illegitimate" children in this country.

Paternity: The law presumes that a man who lives with a woman as her partner at any time between conception of a child and that child's birth is the father of that child. For certainty, though, it is best to record the father's name on the birth certificate – which requires the approval of both parents.

If your circumstances are not covered by this presumption or by the father's name being on the birth certificate, the mother and father can make a joint declaration of paternity, or either of them can apply to the Family Court for a declaration of paternity.

Even if the father of the child has died, it is possible to prove paternity through a declaration in the High Court under the Status of Child Amendment Act. It is best to seek legal advice on how to make any of these declarations.

Guardianship: Guardianship is the term used to describe the rights and responsibilities of a parent. Every child in New Zealand has at least one natural guardian (the mother). Most children in New Zealand have two guardians, the other being the father – but not every father is a guardian. However, a father who was living with the mother as a de facto partner at any time during the period beginning with the conception of the child and ending with the child's birth will be a guardian of that child.

A father named on the birth certificate of a child born after 1 July 2005 will be a guardian of that child.

A father who is not automatically a guardian of the child can be appointed a guardian by the court or by agreement with the mother (which agreement must be ratified by the court). If you are not sure whether you are a guardian, ask your lawyer.

Guardians who separate retain the rights and responsibilities of guardianship. It is very unusual for a guardian to be deprived of that status. Guardians who do not have day-

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to-day care of their children retain the legal right to have a say in all important decisions about the child's names and upbringing, including such matters as education, health, where they live (residence), which religion they follow and other significant issues to do with their welfare. If guardians cannot agree on these matters, there are a range of out-of-court services available to help them reach agreement. These services are specifically designed to assist with the resolution of family disputes, namely guardianship and care of children matters. A brief outline of these out-of-court services is set out further below.

Care of children: If you and your partner separate, it will be important to decide how your children will be cared for. Even if one parent has primary responsibility for day-to-day care (formerly known as custody), the other parent still has the rights of guardianship.

Contact with children: The parent who does not have day-to-day care will usually have reasonable contact (formerly known as "access") with the children, whether that comes about by agreement between the parents, with the assistance of out-of-court resolution services or, as a last resort, by an order of the Court.

OUT-OF-COURT SERVICES

Agreeing on your own guardianship responsibilities and parenting arrangements is usually better for you and your children. To help you do this, there is a *free* Parenting Through Separation (PTS) course that you can do in either two two-hour sessions or one four-hour session. For information on reaching agreements or how to find a PTS provider near you go to the website at www.justice.govt.nz/family-justice.

If you need further help to reach agreement on a family dispute (guardianship day-to-day care and contact), there is a new service called Family Dispute Resolution (FDR) available for you. FDR is a process where an independent, approved person (known as an FDR Provider) will work with the parties to help define the matters in dispute, discuss their issues constructively and try to reach agreement on them. The FDR provider is focused on helping to achieve agreements that are best for the child. They may involve other family members, such as grandparents, or the whanau.

You can read more about FDR by referring to our guides *What happens when your relationship breaks up?* and *What happens to your children when you part?* or on the Ministry of Justice website at www.justice.govt.nz/family-justice/about-children/making-decisions-about-children/getting-help-outside-the-court/family-dispute-resolution-mediation

If you cannot agree with your ex partner after completing Parenting through Separation or participating in Family Dispute Resolution, you can apply to the Family Court to resolve the matter for you.

Violence: The court will not allow a person who has used violence against their partner

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or child to have the care of or contact with a child unless satisfied that the child would be safe. This may mean that contact has to be supervised. See our guide *Family violence*.

YOUR PARTNER'S CHILDREN

Parental rights: You and/or your partner may have children from previous relationships sharing your family household. Even though you may be acting as a parent to your partner's children, you do not have the legal powers of a parent unless you are formally appointed a guardian by the court or unless you adopt them.

Financial support: Generally, even if the children are living in your household, you have no legal obligation to support your partner's children unless you have adopted them or have signed a binding agreement to pay maintenance for them. There are certain circumstances, however, where a non-natural parent may be liable to pay child support under the Child Support Act – check these with your lawyer. See also the section on Financial Support below. The income of both partners will also be taken into account if either one receives or applies for a social welfare benefit (such as the Unemployment Benefit).

Care and contact: If you and your de facto partner separate and are involved in a dispute about care of or contact with your partner's children, you can go to Family Dispute Resolution.

GETTING HELP

A primary aim of our Family Justice system is to help people reach agreement by themselves and to avoid a court hearing wherever possible. Refer to www.justice.govt.nz/family-justice for further information about all services available to assist you.

FAMILY VIOLENCE

You can get protection from a violent partner through legal means. If you are assaulted or threatened, you can contact the police and they can arrest your partner on a criminal charge.

Under the Domestic Violence Act, a Family or District Court can issue a protection order to protect you from anyone with whom you share a household or have a close personal relationship with who has been violent to you.

The definition of "violence" includes physical or sexual abuse, psychological abuse (such as intimidation, harassment, damage to property and threats), financial or economic abuse (such as denying/limiting access to financial resources or preventing/restricting employment opportunities or access to education) and allowing a child to see or hear such abuse. The protection order gives you the right to choose if and when you have contact

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with the person who has been violent.

Applications for protection orders can be made on behalf of children and they can protect the new partner of an abused person. The orders can be made very quickly – sometimes, in urgent cases, on the same day the application is made. It is best to see a lawyer who will guide you through the forms and apply to a Family Court for you. Legal aid may be available to assist with costs. In an emergency, the police may issue a safety order, which enables a police officer to remove a violent person from the household. This is a temporary safeguard for up to five days. For further details, see our guide *Family Violence*.

FINANCIAL SUPPORT

Sole Parent Support/Jobseeker Support: If you have children and no longer have a partner, you can apply to Work and Income for financial support. The type of support will depend on the age of your youngest dependent child. You may be eligible to receive Sole Parent Support where you have one or more dependent children *aged under 14 years*. If your youngest child is *14 years or over*, you will not qualify for the Sole Parent Support but you may qualify for another benefit such as the Jobseeker Support. Contact your local Work and Income office for further details.

Child support: If you are receiving the Sole Parent or Jobseeker benefit and you have named the other parent(s) of your children, then the other parent(s) will be liable to contribute towards the cost of the benefit by making child support payments to the Inland Revenue Department. If you cease to receive a benefit, the other parent(s) must still pay the assessed amount of child support.

If you are not receiving a benefit, you and the other parent(s) can agree on how much child support the other parent(s) should pay or you may apply to the Inland Revenue Department for an assessment of the child support the other parent(s) will be required to pay. In making its assessment, Inland Revenue uses a formula that takes into account the income and circumstances of the other parent(s), such as who else they have to support.

If either of you disagrees with the assessment, you can ask the Child Support Agency to review it (see the pamphlet *Child Support Administrative Reviews*, which is available from the Inland Revenue Department). If you are still not satisfied with the assessment, in some circumstances you can apply to a Family Court for a “departure order”. A former partner may be liable to pay child support for the children of a partner even if he/she is not the father/mother of those children.

Other benefits/financial support: While you are living together, your partner’s income will be taken into account in deciding your entitlement to any benefits or other financial support, including a Jobseeker Benefit and Working For Families Tax Credits.

New Zealand Superannuation: You and your partner (whether married, civil union or de facto, including same sex relationships) will be entitled to receive New Zealand Superannuation when you reach the qualifying age of 65. Contact your local Work and

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Income office for further details.

Partner support: If you separate, the court may award spousal maintenance in some circumstances.

PROPERTY

Property (Relationships) Act: When any de facto (including same sex) relationship that has lasted longer than three years ends, property of the relationship will be divided according to the Property (Relationships) Act unless you have an agreement otherwise. This applies to relationships that began before the act took effect (1 February 2002) and it can apply when a relationship ends through death as well as through separation.

The general principle is that all relationship property and debts will be shared equally, though there can be exceptions and some property can remain separate. The home you have both lived in, though, will be classed as relationship property that has to be shared equally except in exceptional circumstances, even if one person owned it before the relationship started. See our guide *Dividing up relationship property* for more information, and do get legal advice as this is a complex area of law.

Contracting-out property agreement: If you do not want to be covered by the Property (Relationships) Act, then you should formally contract out of the act by having a legal agreement as to how your property should be divided if your relationship ends.

Each partner will need separate legal advice to make sure the agreement is fair to each of you. Without separate legal advice the agreement will not be enforceable. You may like to consider having such an agreement: if either of you already owns assets (a home, business, etc) when you get together; if either of you has inherited, or is likely to inherit property; or if either of you has children or other dependants to provide for. If you do not have an agreement, you will automatically be covered by the Property (Relationships) Act.

DEATH

Will: If you want your partner (or your partner's children) to receive some or all of your money or property after your death, it is preferable to make a will. If there is no will, your partner and your children may inherit under the Administration Act, but your partner's children cannot inherit from you under that act.

Whether you have made a will or not, your partner can choose to make a claim under the Property (Relationships) Act for their share of the relationship property if they feel that the inheritance is not enough. If your partner makes that choice, they will normally lose the inheritance unless you have expressly said in your will that they may inherit as well as take their share of the relationship property.

Your partner, your children and, in some circumstances, even your partner's children

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could also make a claim under the Family Protection Act if you have not provided for them sufficiently in your will, or possibly under the Law Reform (Testamentary Promises) Act (see our guide *Making a Will and Estate Administration*).

It is very important to review a will if you separate.

Family home: If you and your partner own the home in which you live as joint tenants, your partner automatically becomes the sole owner on your death.

If you both own the home in defined shares (whether equal or unequal), your share becomes part of your estate and is dealt with according to your will or the Administration Act rules that apply to people who die without a will. This may not be what you want and it could mean the home has to be sold so that your estate and your partner can each be paid their share out of the proceeds. However, if your partner chooses to apply for a division of relationship property under the Property (Relationships) Act, the family home (no matter which partner owns it or when it was acquired) is classed as relationship property and the surviving partner may claim a share under that act. Your partner will then normally not inherit, as explained above.

OTHER MATTERS

Parental leave: People in de facto relationships qualify for parental leave entitlements. A mother is entitled to up to 14 weeks' maternity leave and a father up to two weeks' paternity leave, and there is provision for this to be extended up to 52 weeks in total for either parent. Parental leave applies to the birth of a child of the relationship and to the adoption of a child if not more than five years of age. In addition, up to 13 weeks (14 weeks from December 2005) paid parental leave (this is different from the leave mentioned above) will be available to the mother in the case of a birth, or either parent in the case of an adoption, where they meet certain criteria as regards employment.

For more details on any form of parental leave, see the website www.ers.dol.govt.nz or check with the Department of Labour or your lawyer.

Contraception, sterilisation and abortion: In law, the consent of a partner, or of the parents of a child or young person, is not necessary for contraception, sterilisation or abortion.

DO THE RIGHT THING – SEE YOUR LAWYER FIRST

Lawyers deal with many personal, family, business and property matters and transactions.

No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour which are set out in their

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Rules of Conduct and Client Care. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our guide *Seeing a lawyer – what can you expect?* This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee, which must be fair and reasonable, will take into account the time taken and the lawyer’s skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter.

There could also be other costs to pay, such as court fees. You should discuss with your lawyer how you will pay for the work and advise if you don’t want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The guide *Seeing lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer. Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate.

You can also check this on the Register of Lawyers which is accessible through the website www.lawsociety.org.nz.

If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service by phoning 0800 261 801.

IF YOU DON’T HAVE A LAWYER

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;

CHECK THESE WEBSITES

www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation

www.familylaw.org.nz/public/find-a-lawyer

To the best of the New Zealand Law Society’s knowledge, the information in this guide is true and accurate as at 1 July 2014. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this guide. It is recommended that readers consult a lawyer before acting on this information.

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